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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

In re D.C. et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

MORGAN S.,

Defendant and Appellant.

B288666

(Los Angeles County
Super. Ct. No. 17LJJP088)

APPEAL from an order of the Superior Court of
Los Angeles County, Nancy Ramirez, Judge. Affirmed in part
and dismissed in part.

Linda J. Vogel, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Acting Assistant County Counsel, and David Michael Miller,
Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Morgan S. appeals from the juvenile court’s jurisdiction findings and disposition order declaring her children—Deegan C., Connor B., and Kole D., then 13, 8, and 4 years old—dependents of the juvenile court under Welfare and Institutions Code section 300, subdivision (b)(1),¹ and removing them from Morgan in the event she missed or failed to pass a randomly administered drug test. Morgan contends that substantial evidence did not support the juvenile court’s jurisdiction findings and that the court’s “conditional removal” order violated “the dependency statutory scheme and [her] due process rights.” Because her first contention is incorrect and her second contention is admittedly moot, we affirm the jurisdiction findings and dismiss Morgan’s appeal from the disposition order.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Petition and Detention Hearing*

In October 2017 the Los Angeles County Department of Children and Family Services detained Morgan’s three children from her and filed a petition under section 300, subdivision (b)(1), alleging her failure or inability to adequately supervise or protect the children and her inability to provide regular care for them due to her substance abuse put them at substantial risk of serious physical harm. Among other supporting facts, the Department alleged: “Morgan . . . has a history of substance abuse including cocaine, marijuana and alcohol and is a current

¹ Statutory references are to the Welfare and Institutions Code.

abuser of cocaine which renders [her] incapable of providing the children with regular care and supervision. On 9/5/17 [Morgan] had a positive toxicology screen for cocaine. On 9/5/17 [Morgan] was under the influence of cocaine, while the children were in [her] care and supervision. Prior [Department] services failed to resolve the family problems in that [Morgan] continues to abuse illicit drugs.”

In its detention report the Department noted that, as part of a plan of informal supervision from an earlier dependency case, Morgan had 12 drug tests scheduled between February 1, 2017 and September 5, 2017—three of which she missed and one of which, administered September 5, she failed, testing positive for a cocaine metabolite. When a Department social worker called Morgan to report the positive test result, Morgan stated, “I only did one line of coke.” When the social worker asked if her children were with her at the time she “did [that] one line of coke,” Morgan did not respond. Later in the conversation, Morgan denied she had ever used cocaine.

At the detention hearing on October 6, 2017 the juvenile court found that the Department made a prima facie showing the children came within section 300, but that reasonable services were available to prevent detention. The court released the children to Morgan, under the Department’s supervision, on the condition Morgan continue to live with the children’s maternal grandmother and continue “to test and test clean” for drug use. In its order, the court stated: “Any dirty or unexcused/missed test will allow the [children] to be detained.”

B. *Section 385 Hearing and Detention*

On October 26, 2017 Morgan failed to appear for a scheduled drug test. Over the next three weeks, she took three tests for which the results were negative. When a Department social worker met with her on November 20, 2017, Morgan became “upset” at having to take a random drug test that day, protesting that “she just tested and she was supposed to be testing only twice a month.” The social worker observed that Morgan’s pupils were constricted and that she was “drinking a large amount of liquids during the visit.” About a week later the social worker received the results of the November 20, 2017 test, which were positive for amphetamine and methamphetamine and showed the sample was diluted.

When the social worker called Morgan to inform her of the positive test results and the Department’s intent to detain the children, Morgan denied taking any illegal drugs. Morgan said she was taking a diet pill called Phentramin-d and suggested this could have caused the positive test result. The social worker contacted a technician at the toxicology laboratory that had reported the test results and told the technician what Morgan had suggested about the diet pill. The technician replied: “No, absolutely not. We can detect the difference . . . very easily.” The social worker relayed these statements to Morgan, who continued to deny using any illegal drugs. She said she did not “know why her test would be positive” because she had “been taking at-home drug tests before all of her [Department] drug tests and all of the at-home tests were negative.”

On December 14, 2017 the juvenile court held a hearing under section 385 on whether to modify its October 6, 2017 order placing the children with Morgan. After making the findings

necessary for detaining the children, the juvenile court removed them from Morgan, placed them in the care, custody and control of the Department, and ordered monitored visits for Morgan.

C. *Jurisdiction and Disposition*

The juvenile court held the jurisdiction and disposition hearing on January 8 and 9, 2018. The court heard testimony from Deegan C., Conner B., and the Department social worker who interacted with Morgan about the November 20, 2017 drug test. The court also admitted into evidence various reports and last minute informations from the Department. The reports also showed that Morgan again tested positive for amphetamine and methamphetamine on December 12, 2017 and, confronted with those tests results, again denied using any illegal drugs.

The juvenile court amended the allegation concerning Morgan's substance abuse to include the positive tests for amphetamine and methamphetamine on November 20, 2017 and December 12, 2017, sustained the petition upon finding the amended allegation true, and dismissed all other allegations. In support of its true findings, the court observed that Morgan's drug use met at least two of the criteria set forth in the definition of "substance abuse" in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (4th rev. ed. 2000) (DSM-IV-TR): "recurrent substance-related legal problems," as evidenced by her current and previous dependency cases, and "continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance," as evidenced by her continuing to miss and fail drug tests when she knew her custody of the children was at stake.

Proceeding to disposition, the juvenile court found, as it had at the initial detention hearing, there were reasonable services available to prevent removal of the children from Morgan. The court released the children to Morgan on the condition that Morgan continue to reside in the home of the children's maternal grandfather and his wife or any Department-approved location and that Morgan "continue to test and test clean" for drug use. The court ordered the children "shall be removed" from Morgan upon any "dirty test" or "unexcused missed test." On February 22, 2018 Morgan timely appealed the jurisdiction findings and disposition order.

D. *Supplemental Petition, Removal, and Termination*

Meanwhile, Morgan failed three more drug tests. She tested positive for marijuana on January 17, 2018, for methamphetamine and amphetamine on January 26, 2018, and again for methamphetamine and amphetamine on January 31, 2018. As a result, the Department obtained and executed a warrant from the juvenile court to remove the children. The Department also filed a supplemental petition under section 387, seeking to modify the January 9, 2018 disposition order to remove the children from Morgan. In May 2018 the juvenile court sustained the supplemental petition, removed the children from Morgan, and placed them with their fathers. The court terminated jurisdiction, making exit orders giving sole physical custody to the children's fathers, joint legal custody to the children's fathers and Morgan, and monitored visitation for Morgan. Morgan did not appeal any of the court's findings or orders on the supplemental petition.

DISCUSSION

A. *Substantial Evidence Supported the Jurisdiction Findings*

1. *Applicable Law and Standard of Review*

Section 300, subdivision (b)(1), authorizes the dependency court to assert jurisdiction when the social services agency proves by a preponderance of the evidence that there is a substantial risk the child will suffer serious physical harm or illness as a result of, as relevant here, “the failure or inability of his or her parent . . . to adequately supervise or protect the child” or “the inability of the parent . . . to provide regular care for the child due to the parent’s . . . substance abuse.” (See *In re M.R.* (2017) 7 Cal.App.5th 886, 896.) “Although section 300 generally requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing [citations], the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. [Citation.] The court may consider past events in deciding whether a child currently needs the court’s protection. [Citation.] A parent’s “[p]ast conduct may be probative of current conditions” if there is reason to believe that the conduct will continue.” (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383-1384; accord, *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1215.)

“In reviewing the jurisdictional findings . . . , we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the

light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” (*In re R.T.* (2017) 3 Cal.5th 622, 633.)

2. *There Was Substantial Evidence of Substance Abuse and Resulting Risk of Serious Harm*

Morgan contends substantial evidence did not support the juvenile court’s finding that her drug use constituted “substance abuse” within the meaning of section 300, subdivision (b)(1). It is true that, “without more, the mere usage of drugs by a parent is not a sufficient basis on which dependency jurisdiction can be found.” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 764.) But here there was more.

Between February and December 2017, Morgan failed six drug tests,² suggesting her drug use was not occasional, but steady and frequent. The record also suggests her drug use was escalating in intensity: from use of alcohol and marijuana, as she admitted in her previous dependency case, to use of cocaine and methamphetamine. Morgan initially minimized the significance of her conduct (“I only did one line of coke”), then denied it altogether, while taking steps to hide it (using at-home drug tests before submitting to the tests administered by the Department and diluting her urine sample) and taking no steps to address it. Finally, not only was Morgan’s drug use the subject of two dependency proceedings, she continued to use drugs knowing that, in the current proceeding, the removal of her children was at stake.

² Missing a drug test is “properly considered the equivalent of a positive test result.” (*In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1217.)

This evidence supported the finding of substance abuse under section 300, subdivision (b)(1). (See *In re Alexzander C.* (2017) 18 Cal.App.5th 438, 448 [affirming substance abuse finding where the father’s methamphetamine use was a “habit,” increased in frequency from initial occasional use, resulted in recurrent legal problems, and continued during the dependency proceeding despite his fear his children would be taken away]; *In re Kadence P.*, *supra*, 241 Cal.App.4th at p. 1384 [affirming jurisdiction finding based on substance abuse where the mother hid her use of methamphetamine and marijuana, avoided drug tests, and diluted samples]; *In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1218 [affirming jurisdiction finding based on substance abuse where the mother, among other things, initially denied cocaine use, missed a drug test, and failed to enroll in a substance abuse program]; *In re Drake M.*, *supra*, 211 Cal.App.4th at p. 766 [substance abuse may be manifested by, among other things, “recurrent substance-related legal problems” or “continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance”]; see also *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197 “[o]ne cannot correct a [drug] problem one fails to acknowledge”).)

Morgan objects that she “was never diagnosed” as a substance abuser and that she did not meet any of the criteria for such a diagnosis as set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), which she suggests the juvenile court should have consulted instead of the DSM-IV-TR.³ As we observed in *In re Christopher R.*, *supra*, 225

³ Actually, the DSM-5 does not define “substance abuse,” having replaced the definition of that term in the DSM-IV-TR

Cal.App.4th 1210, however, neither a diagnosis of substance abuse nor satisfaction of the definition of substance abuse under the DSM is required. (See *id.* at p. 1218 [rejecting the “argument that only someone who has been diagnosed by a medical professional or who falls within one of the specific DSM-IV-TR categories can be found to be a current substance abuser”].)

Morgan also contends there was no substantial evidence her conduct put the children at substantial risk of suffering serious harm. Not correct. First, for a child “of tender years,” which included at least four-year-old Kole, “the finding of substance abuse is prima facie evidence of the inability of a parent . . . to provide regular care resulting in a substantial risk of harm.” (*In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1219; see *ibid.* [a child “of tender years” includes a six-year-old].) Morgan does not acknowledge this presumption, let alone demonstrate that and how she rebutted it. In addition, methamphetamine is “an inherently dangerous drug known to cause visual and auditory hallucinations, sleep deprivation, intense anger, volatile mood swings, agitation, paranoia, impulsivity, and depression.” (*In re Alexzander C.*, *supra*, 18 Cal.App.5th at p. 449; see *U.S. v. Alvarez-Bernabe* (10th Cir. 2010) 626 F.3d 1161, 1166 [“methamphetamine [is] an indisputably dangerous drug”]; see also *State v. Bulington* (Ind. 2004) 802 N.E.2d 435, 440 [“the serious dangers of methamphetamines” include “abuse or neglect by adults on a long, cheap high”].) The juvenile court could reasonably infer Morgan’s use of such a dangerous drug put the children at

with “a more broadly defined classification of ‘substance use disorders,’ which combines substance abuse and dependence.” (*In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1218, fn. 6.)

substantial risk of serious harm, particularly given that she stated “her children are always with her day and night” and that the evidence strongly suggests she had used cocaine when the children were with her.

B. *Morgan’s Challenge to the Disposition Order Is Moot*

In her opening brief Morgan challenges the juvenile court’s January 9, 2018 disposition order that provided for conditional removal—i.e., removal of the children from Morgan in the event she failed or missed a drug test—on the ground the order violated her rights under the statutes governing dependency jurisdiction and her rights to due process. In her reply brief, however, Morgan admits the record of subsequent proceedings shows “the Department . . . followed required procedures to bring the case back before the juvenile court, effectively curing the [disposition] order’s due process violations,” and Morgan concedes the Department’s actions rendered “moot [her] due process/statutory violation argument.” We agree and therefore dismiss Morgan’s appeal from the disposition order as moot. (See *In re N.S.* (2016) 245 Cal.App.4th 53, 58-59 “[a]n appellate court will dismiss an appeal when an event occurs that renders it impossible for the court to grant effective relief”]; *In re E.T.* (2013) 217 Cal.App.4th 426, 436 “[a]n appeal may become moot where subsequent events, including orders by the juvenile court, render it impossible for the reviewing court to grant effective relief”].)

DISPOSITION

The juvenile court’s jurisdiction findings are affirmed. Morgan’s appeal from the juvenile court’s disposition order is

dismissed as moot. Morgan's motion to reconsider and vacate our order denying her request for judicial notice of publications by the American Psychiatric Association is denied.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.